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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
DIVISION OF PORTLAND

LISA MARIE ROBERTS,

Petitioner,

v.

MARK NOOTH,

Respondent.

Civ. No. 08-1433-HU

**PETITIONER'S MOTION FOR
DISCOVERY ORDER**

Petitioner Lisa Marie Roberts, through counsel, respectfully moves this Court pursuant to Rule 6(a) of the Rules Governing Section 2254 Cases in the United States District Courts for a discovery order. Ms. Roberts is actually innocent of the manslaughter death of her girlfriend, Jerri Lee Williams. Her guilty plea was entered as a result of ineffective assistance of counsel and mental health problems. Ms. Roberts now seeks discovery to prove her actual innocence in order to waive procedural default of her claims and the untimely filing of her habeas corpus petition.

Newly discovered evidence shows that at least one male deoxyribonucleic acid (DNA) contributor's biological material is under the victim's fingernails, on the pillowcase found near her body, and was recovered from swabs of her chest. This information is exculpatory and was not

known to the parties at the time of Ms. Roberts' plea. The presence of spermatozoa in the victim's vagina was known at the time of the plea but the Oregon State Police Lab (herein after referred to as "Police Lab") was only able to create a fragmentary DNA profile from this material and could not identify the contributor despite efforts to do so.

A comprehensive forensic report is attached to this motion prepared by examiner Karen Lawless. Using the latest DNA techniques, it is possible to re-test existing samples and remaining evidence, including approximately 40 spermatozoa heads, at least two unused chest swabs, the pillow case, and fingernail materials. There may be enough remaining DNA material available to identify the male depositor by creating a DNA profile that can be compared to the CODIS database in order to identify Jerri Lee Williams' killer.

Ms. Roberts specifically requests this court to:

1. Grant permission to retest all DNA evidence related to the murder of Jerri Lee Williams, including that which was unavailable to Ms. Roberts at the time of her plea bargain, at an independent, reputable laboratory capable of Y-STR, Mini-STR analysis, and the ability to process non-routine evidence.
 - A. Ms. Roberts respectfully requests that this Court grant permission to run the analyses specified in Table 1 upon the following evidence:
 - i. Six Vaginal Swabs (Lab Ex. 6.4)
 - ii. Six Breast Swabs (Lab Ex. 6.8)
 - iii. Fingernails from the Victim's Right Hand (Lab Ex. 6.9)
 - iv. Fingernails from the Victim's Left Hand (Lab Ex. 6.10)
 - v. Pillowcase (Lab Ex. 7.2, 7.3 and 7.4)

Table 1:

Lab Ex. #	Description	Type of Testing Possible
6.4 – swab sticks	Vaginal swab – remaining swab material and/or swab sticks	STR, Y-STR, and/or Mini-STR
6.4 – Extract	Vaginal swabs – remaining DNA extract from sperm fraction	Y-STR
6.4 – sperm slides	Vaginal swabs – sperm slides created during DNA extraction process (3 slides with combined total of ~ 25 sperm heads)	STR, Y-STR, and/or Mini-STR
6.1A & 6.1B	Vaginal smears taken at autopsy (2 smears with combined total of ~ 12 sperm heads)	STR, Y-STR, and/or Mini-STR
6.8	Two Breast swabs	STR, Y-STR, and/or Mini-STR
6.8 - Extracts	Breast swab extracts – remaining DNA extract	Y-STR and/or Mini-STR
6.9	Right Hand Fingernail Scrapings – actual clippings	STR, Y-STR, and/or Mini-STR
6.9 - Extract	Right Hand Fingernail Scrapings – remaining DNA extracts	Y-STR and/or Mini-STR
6.10	Left Hand Fingernail Scrapings – actual clippings	STR, Y-STR, and/or Mini-STR
6.10 - Extract	Left Hand Fingernail Scrapings – remaining DNA extracts	Y STR
7	Pillowcase	STR, Y-STR, and/or Mini-STR
7.2-7.4 Extracts	Pillowcase	Y-STR and/or Mini-STR

A detailed report from forensic DNA consultant Karen Lawless specifying the new processes that are available for testing is attached. This motion is supported by the accompanying memorandum of law. Pursuant to L.R. 7.1(a), undersigned counsel contacted counsel for Respondent.

RESPECTFULLY SUBMITTED this June 25, 2010.

/s/ Alison M. Clark

Alison M. Clark, Attorney for Petitioner